

REMARKS¹

In the Office Action, the Examiner took the following actions:

1. rejected claims 1, 2, and 11 under 35 U.S.C. § 103(a) as being unpatentable over alleged applicant admitted prior art (“AAPA”) in view of U.S. Patent App. Pub. No. 2003/0031125 to Oyamada et al. (“*Oyamada*”);
2. rejected claims 3 and 4 under 35 U.S.C. § 103(a) as being unpatentable over AAPA in view of *Oyamada*, and further in view of U.S. Patent App. Pub. No. 2006/0193248 to Filsfils et al. (“*Filsfils*”);
3. rejected claims 5-9 and 12-15 under 35 U.S.C. § 103(a) as being unpatentable over AAPA in view of *Oyamada*, and further in view of U.S. Patent No. 7,343,423 to Goguen et al. (“*Goguen*”); and
4. rejected claims 10, 16, and 17 under 35 U.S.C. § 103(a) as being unpatentable over AAPA in view of *Oyamada* and *Goguen*, and further in view of *Filsfils* and US Patent No. 7,646,710 to Christie (“*Christie*”).

By this Amendment, Applicant has amended independent claims 1 and 11. Claims 1-17 remain pending and under current examination. Applicant respectfully requests reconsideration and allowance of the application for at least the reasons set forth below.

Examiner’s Interview

Applicant thanks Examiner for his time and courtesy in granting an interview on December 2, 2010.

¹ As Applicant’s remarks with respect to the Examiner’s rejections are sufficient to overcome these rejections, Applicant’s silence as to certain assertions or requirements applicable to such rejections (e.g., whether a reference constitutes prior art, motivation to combine references, etc.) is not a concession by Applicant that such assertions are accurate or such requirements have been met, and Applicant reserves the right to analyze and dispute such in the future.

During the interview, claim 1 was discussed with respect to the *Oyamada* reference.

Applicant's representative and the Examiner discussed proposed amendments to further distinguish the claims over the cited reference. The substance of the interview is incorporated in this response.

Rejection of Claims 1, 2, and 11 under 35 U.S.C. § 103(a)

Applicant respectfully traverses the rejection of claims 1, 2, and 11 under 35 U.S.C. § 103(a) as being unpatentable over AAPA in view of *Oyamada*. A *prima facie* case of obviousness has not been established.

“The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. ... [R]ejections on obviousness cannot be sustained with mere conclusory statements.” M.P.E.P. § 2142, 8th Ed., Rev. 6 (Sept. 2007) (internal citation and inner quotation omitted). “The mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art.” M.P.E.P. § 2143.01(III) (emphasis in original). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” M.P.E.P. § 2143.03. “In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious.” M.P.E.P. § 2141.02(I) (emphases in original).

“The framework for objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). ... The factual inquiries ... [include determining the scope and content of the prior art and] ... ascertaining the differences between the claimed invention and the prior art.” M.P.E.P. § 2141(II). “Office

personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art.” M.P.E.P. § 2141(III).

Independent claim 1 calls for a combination including, for example, “setting routing information and tunnel state information for each of at least two tunnels, ..., wherein **the routing information and tunnel state information of the at least two tunnels are stored in one route forwarding table in an IP network....**”

AAPA discloses that “[t]he PE-E selects the route advertised by the PE-A as the optimal route, then the PE-E fills in a forwarding item used by a forwarding engine only the routing information advertised by the PE-A.” Specification, par. [0011]. According to AAPA, “When PE-E detects the malfunction of PE-A, PE-E needs to “re-select the route advertised by the PE-B. Meanwhile, the PE-E fills in the forwarding item of the forwarding engine with the new **routing information.**” Specification, par. [0013] (emphasis added). That is to say, when the PE-E detects the malfunction of PE-A, the PE-E needs to re-select the other routing information, and then stores the re-selected routing information into the forwarding item. It can be seen that before step of detecting, the AAPA’s forwarding item contains **only** routing information of one tunnel which has been selected in advance. Thus, AAPA fails to disclose or teach the “tunnel state information” in routing forwarding table as recited claim 1. AAPA also fails to disclose or teach “the routing information and tunnel state information of the at least two tunnels are stored in one route forwarding table in an IP network,” as recited in claim 1.

Oyamada fails to cure the deficiencies of AAPA. *Oyamada* discloses two different tables: an OSI tunnel table in an OSI network and an IP routing table in an IP network (*See Oyamada*, FIG. 13, FIG. 16 and FIG. 15). The state of tunnels are stored in the OSI tunnel table, but not in the routing table. In *Oyamada*, the OSI network is different from the IP network, and the state of

the OSI tunnel in the OSI tunnel table in the OSI network cannot be used in the IP network. Thus, OSI tunnel table in the **OSI network** is **different from** the “route forwarding table” in **an IP network** as recited in claim 1.

In view of the above, *Oyamada* also fails to teach or suggest “wherein the routing information and tunnel state information of the at least two tunnels are stored in one route forwarding table in an IP network,” as recited in claim 1, and thus does not compensate for the deficiencies of AAPA.

For at least the reasons discussed above, the Office has neither properly determined the scope and content of the prior art nor properly ascertained the differences between the prior art and the invention of amended claim 1. Moreover, there is no motivation for one of ordinary skill in the art to modify the references to achieve the claimed combination. Thus, no reason has been clearly articulated as to why claim 1 would have been obvious to one of ordinary skill in the art in view of the prior art. Accordingly, a *prima facie* case of obviousness has not been established with respect to claim 1, and claim 1 is allowable.

Independent claim 11, although different in scope from independent claim 1, recites elements similar to those of claim 1. As such, for reasons similar to those discussed above in regard to the rejection of claim 1, claim 11 is allowable. Claim 2 is also allowable at least by virtue of its dependence from claim 1.

Rejection of Claims 3 and 4 under 35 U.S.C. § 103(a)

Applicant respectfully traverses the rejection of claims 3 and 4 under 35 U.S.C. § 103(a) as being unpatentable over AAPA in view of *Oyamada*, and further in view of *Filsfils*. A *prima facie* case of obviousness has not been established.

Claims 3 and 4 depend from claim 1, and thus include all the elements thereof. As discussed above in regard to the rejection of claim 1, AAPA and *Oyamada*, whether taken alone or in combination, fail to teach or suggest at least “wherein the routing information and tunnel state information of the at least two tunnels are stored in one route forwarding table in an IP network,” as recited in claim 1 and included in claims 3 and 4.

The Office asserted that *Filsfils* teaches elements of claims 3 and 4. *See* Office Action, pp. 5-6. Without acquiescing to this assertion, Applicant respectfully submits that *Filsfils* also fails to teach or suggest the above-noted elements, and thus does not cure the deficiencies of AAPA and *Oyamada*.

For at least this reason, the Office has neither properly determined the scope and content of the prior art nor properly ascertained the differences between the prior art and the invention of claims 3 and 4. Moreover, there is no motivation for one of ordinary skill in the art to modify the references to achieve the claimed combination. Thus, no reason has been clearly articulated as to why claims 3 and 4 would have been obvious to one of ordinary skill in the art in view of the prior art. Accordingly, a *prima facie* case of obviousness has not been established with respect to claims 3 and 4, and the claims are allowable.

Therefore, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claims 3 and 4 under 35 U.S.C. § 103(a).

Rejection of Claims 5-9 and 12-15 under 35 U.S.C. § 103(a)

Applicant respectfully traverses the rejection of claims 5-9 and 12-15 under 35 U.S.C. § 103(a) as being unpatentable over AAPA in view of *Oyamada*, and further in view of *Goguen*. A *prima facie* case of obviousness has not been established.

Claims 5-9 and 12-15 ultimately depend from claim 1, and thus include all the elements thereof. As discussed above in regard to the rejection of claim 1, AAPA and *Oyamada*, whether taken alone or in combination, fail to teach or suggest at least “wherein the routing information and tunnel state information of the at least two tunnels are stored in one route forwarding table in an IP network” as recited in claim 1 and included in claims 5-9 and 12-15.

The Office asserted that *Goguen* teaches elements of claims 5-7, 9, 14, and 15. *See* Office Action, pp. 7-8. Without acquiescing to this assertion, Applicant respectfully submits that *Goguen* also fails to teach or suggest the above-noted elements, and thus does not cure the deficiencies of AAPA and *Oyamada*.

For at least this reason, the Office has neither properly determined the scope and content of the prior art nor properly ascertained the differences between the prior art and the invention of claims 5-9 and 12-15. Moreover, there is no motivation for one of ordinary skill in the art to modify the references to achieve the claimed combination. Thus, no reason has been clearly articulated as to why claims 5-9 and 12-15 would have been obvious to one of ordinary skill in the art in view of the prior art. Accordingly, a *prima facie* case of obviousness has not been established with respect to claims 5-9 and 12-15, and the claims are allowable.

Therefore, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claims 5-9 and 12-15 under 35 U.S.C. § 103(a).

Rejection of Claims 10, 16, and 17 under 35 U.S.C. § 103(a)

Applicant respectfully traverses the rejection of claims 10, 16, and 17 under 35 U.S.C. § 103(a) as being unpatentable over AAPA in view of *Oyamada* and *Goguen*, and further in view of *Filsfils* and further in view Christie. A *prima facie* case of obviousness has not been established.

Claims 10, 16, and 17 depend from claims 5, 6, and 7, respectively, and thus include all the elements thereof. As discussed above in regard to the rejection of claims 5-7, AAPA, *Oyamada*, and *Goguen*, whether taken alone or in combination, fail to teach or suggest at least “wherein the routing information and tunnel state information of the at least two tunnels are stored in one route forwarding table in an IP network” as recited in claim 1 and included in claims 10, 16, and 17.

The Office asserted that *Filsfils* and *Christie* teach elements of claims 10, 16, and 17. See Office Action, pp. 9-10. Without acquiescing to this assertion, Applicant respectfully submits that *Filsfils* and *Christie* also fail to teach or suggest the above-noted elements, and thus does not cure the deficiencies of AAPA, *Oyamada*, and *Goguen*.

For at least this reason, the Office has neither properly determined the scope and content of the prior art nor properly ascertained the differences between the prior art and the invention of claims 10, 16, and 17. Moreover, there is no motivation for one of ordinary skill in the art to modify the references to achieve the claimed combination. Thus, no reason has been clearly articulated as to why claims 10, 16, and 17 would have been obvious to one of ordinary skill in the art in view of the prior art. Accordingly, a *prima facie* case of obviousness has not been established with respect to claims 10, 16, and 17, and the claims are allowable.

Therefore, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claims 10, 16, and 17 under 35 U.S.C. § 103(a).

CONCLUSION

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: December 14, 2010

By: /Weiguo Chen/
Weiguo Chen
Reg. No. 61,878
(650) 849-6729